Law Offices of
OLSON
HAGEL &
FISHBURN
LLP

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VIA HAND DELIVERY

Honorable Ross Johnson, Chairman
and Commissioners Remy, Huguenin, Leidigh and Hodson
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Agenda Items #12 & 13

Dear Chairman Johnson and Commissioners:

I write on behalf of the California Democratic Party (CDP) regarding the Commission's proposed Advice Letter I-06-071 to Charles Bell modifying prior advice with respect to interpretation of FPPC regulation 18215(c)(16) (Item 12) and a suggested regulation interpreting Government Code section 85303(c) (Item 13).

On behalf of CDP, I wish to express my strong concern that by adoption of the proposed advice letter the Commission is a de facto interpretation of section 85303(c) without allowing the Commission's normal regulatory process to proceed. I am referring specifically to the ultimate conclusion through the Bell advice letter that committee fundraising expenses are, as a practical matter, not "for purposes other than making contributions to candidates for elective state office." Such a conclusion has broad implications not only for sponsored committees, but any committee, including political party committees.

Before the Commission reaches that conclusion through modification of the Bell advice letter, CDP respectfully requests the Commission instead use its regulatory process to answer the fundamental question of what does "for purposes other than making contributions to candidates" mean. A brief historical review of how this issue has been dealt with in the past may be instructive.

In 1988 voters approved Proposition 73 imposing contribution limits upon committees and candidates for elective office. Proposition 73 contained nearly identical language to that now found in section 85303(c) which allowed committees to accept unlimited contributions if those contributions were used for purposes other than making contributions to candidates. Through advice letter the Commission staff concluded that fundraising expenses were for "purposes other than making contributions to candidates for elective state

Lance H. Olson
Bruce J. Hagel
Diane M. Fishburn
Elizabeth L. Gade
Deborah B. Caplan
N. Eugene Hill
Richard C. Miadich
Richard R. Rios
Rebecca J. Olson
William B. Tunick

555 Capitol Mall, Suite 1425 Sacramento, CA 95814-4602
Telephone: (916) 442-2952 Facsimile: (916) 442-1280 www.olsonhagel

office." (*Eldred Advice Letter*, FPPC Advice Letter No. A-89-038) Subsequently, Proposition 73 was found unconstitutional by the courts.

In 1996 voters adopted Proposition 208 imposing contribution limits upon candidates and committees much stricter than those imposed by Proposition 73. Moreover, Proposition 208 contained no broad exemption from the contribution limits for committees which raised money "for purposes other than making contributions to candidates." In the wake of Proposition 208's passage, the Commission adopted a regulation (section 18215(c)(16)) exempting certain payments from the definition of "contribution" made by sponsors of committees in support of the sponsor's political committee. The practical effect of this regulation was to allow sponsoring organizations to pay for administrative costs benefiting a committee without violating the Proposition 208 contribution limits imposed upon committees. Subsequently a trial court enjoined enforcement of Proposition 208 on the basis that the contribution limits were too low to pass constitutional scrutiny.

While the validity of Proposition 208 was pending on appeal, the voters enacted Proposition 34 which repealed Proposition 208 and imposed new, less stringent contribution limits, on state candidates and committees which contributed to those candidates. Significantly, Proposition 34 re-enacted the language contained in Proposition 73 which allowed committees, including political party committees, to raise funds outside the contribution limits so long as those contributions were received "for purposes other than making contributions to candidates for elective state office." This is the language currently found in section 85303(c).

We now find the Commission, through a modified advice letter, poised to interpret section 85303(c) differently from how Commission staff interpreted through advice letter similar language contained in Proposition 73. Moreover, the current interpretation appears driven by the language of regulation 18215(c)(16) which was adopted after Proposition 208 passed and which is now been repealed by Proposition 34.

CDP believes the correct approach to this issue is for the Commission to follow its normal regulatory process and adopt a regulation interpreting section 85303(c). Such an approach will give appropriate notice to all interested parties to comment and testify before the Commission and allow the Commission to make an informed and reasoned decision as to section 85303(c)'s meaning and its effect on contributions received by committees and used for fundraising into an account that is later used to make contributions to state candidates.

CDP does not believe the Commission should de facto interpret section 85303(c) through its current approach of adopting an advice letter. Such an approach is flawed for two reasons. First, it does not afford the regulated community the protections required by the normal administrative regulatory process. Second, an advice letter has limited interpretive value compared to a regulation.

If the Commission proceeds with adoption of the modified Bell advice letter, CDP trusts its interpretation does not foreclose a different, and in CDP's view, more correct interpretation of section 85303(c) once a regulation regarding this section is considered by the Commission.

Finally, in light of the present advice letters and staff interpretation of 18215(c)(16) as well as the need for an immediate resolution of this issue, CDP urges the Commission to expedite the regulatory process of interpreting section 85303(c) over the current staff proposal contained in the regulatory calendar.

Very truly yours,

OLSON HAGEL & FISHBURN LLP

LANCE H. OLSON

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